

1 are both cited in our trial briefs. It's the report and
2 order in PR Docket Number 92-79, which is 7 FCC Record 5558.
3 And the second one is --

4 MR. SHAINIS: Did you say 7 FCC Record 5558?

5 MR. SCHAUBLE: Correct.

6 MR. SHAINIS: Okay. Thank you.

7 MR. SCHAUBLE: PR Docket Number 92-78 the report
8 and order in there --

9 JUDGE CHACHKIN: What does it say?

10 MR. SCHAUBLE: -- 7 FCC Record 6344.

11 JUDGE CHACHKIN: And what does it say?

12 MR. KNOWLES-KELLETT: Basically, Your Honor, in
13 the two dockets that were hand in hand in the same year
14 there was an elimination of previously all private, land-
15 mobile operators had to produce lists of all their customers
16 to the coordinators.

17 JUDGE CHACHKIN: I'm aware of that.

18 MR. KNOWLES-KELLETT: There also was a list that
19 you had to put loading cards -- the Commission kept loading
20 cards, and all your customers got end-user licenses for SMR
21 end users. With respect to the SMR end user one, they said
22 we're going to go by your business records, and now we're
23 not going to require end-user licensing. With respect to
24 the list of coordinators, they said, we're going to
25 eliminate the list of coordinators and instead, pursuant to

1 308(b), we'll get the necessary documentation from licensees
2 to substantiate when the loading is at issue in compliance
3 cases, and a lot of the information, Your Honor, is
4 contained in footnotes here.

5 MR. KELLER: Can I ask you which of these dockets,
6 if either, either in the report and order or under the rules
7 adopted therein, have anything to do with Subpart L
8 licenses, which is all this questioning has been about?

9 MR. KNOWLES-KELLETT: The list document is all
10 about Subpart L, and I believe that --

11 MR. KELLER: So you're telling me 90 -- so 92-78
12 is Subpart L. Correct?

13 MR. SCHAUBLE: Correct.

14 MR. SCHAUBLE: Part 90 of the Commission's rules
15 pertain to end user and mobile licensing. We'll develop
16 this more in our proposal, the facts.

17 MR. KELLER: But which docket? 92-79?

18 MR. KNOWLES-KELLETT: 92-78.

19 MR. KELLER: But 92-79, if I'm not correct -- if
20 I'm not mistaken, in adopting rules about cluster of
21 records, was speaking solely to 800 Mhz systems and solely
22 to trunk systems, for that matter. So that document would
23 not be relevant to this line of questioning as to Subpart L
24 stations. Now, if there is something about 92-78, I'll go
25 back and review that and raise the issue later.

1 MR. KNOWLES-KELLETT: Seventy-nine, however, we
2 believe, is persuasive authority with respect to what was
3 substantiated and what was --

4 MR. KELLER: Okay.

5 MR. KNOWLES-KELLETT: -- so it's not directly on
6 point; however, the other says we'll gather documents to
7 substantiate mobile loading, and at the same time the
8 Commission said what will be sufficient to substantiate
9 mobile loading, in its mind. So that's, we think, very
10 pertinent to a compliance case regarding paper loading.

11 MR. KELLER: Well, I will withhold the objection
12 at this time. At least that's enough clarification to allow
13 me to go back and look at it.

14 JUDGE CHACHKIN: As I gather, the issue is not
15 whether we've kept proper records; the issue is whether, in
16 fact, there were sufficient units to justify him having
17 these frequencies? Isn't that what the issue is?

18 MR. KNOWLES-KELLETT: The way I believe it's run,
19 Your Honor, is contrary to that. I believe that you should
20 examine what mobile units we can give them credit for.

21 JUDGE CHACHKIN: What is this credit?

22 MR. KNOWLES-KELLETT: Okay.

23 JUDGE CHACHKIN: What is the issue? Is that the
24 issue? How does the issue read?

25 MR. SHAINIS: Do you want the designation, Your

1 Honor?

2 JUDGE CHACHKIN: Yes.

3 MR. KELLER: Could I confer with the witness,
4 please, for a moment, Your Honor?

5 JUDGE CHACHKIN: Do you want to talk to the
6 witness?

7 MR. KELLER: Just for a moment.

8 (Pause.)

9 JUDGE CHACHKIN: Is there an issue dealing with --

10 MR. KNOWLES-KELLETT: -- mobile loading, yes,
11 encompassed in Issue C, Your Honor.

12 JUDGE CHACHKIN: It says, "Determine if Kay has
13 wilfully or repeatedly violated any of the Commission's
14 construction and operation requirements, in violations of
15 Sections 90.155, 90.157, 90.313, 90.623, 90.627, 90.631, and
16 90.633 of the Commission's rules". Is that the issue we're
17 talking about?

18 MR. KNOWLES-KELLETT: Correct.

19 JUDGE CHACHKIN: So now you have to establish that
20 he willfully or repeatedly violated any of these rules,
21 whatever they are. So we're not talking about credit here.
22 We're talking about the burden of you establishing whether
23 he willfully or repeatedly violated these rules.

24 MR. KNOWLES-KELLETT: Well, if you would look at
25 the end-user-licensing docket, Your Honor, which is one of

1 these rules, --

2 JUDGE CHACHKIN: Yes.

3 MR. KNOWLES-KELLETT: -- it tells you about what
4 we'll credit in terms of mobile loading.

5 JUDGE CHACHKIN: Well, that's not the issue here.
6 Now, you have to establish whether he willfully or
7 repeatedly violated these rules, and do you know what
8 "willful" means?

9 MR. KNOWLES-KELLETT: I agree with you completely,
10 Your Honor. I do know what "willful" means.

11 JUDGE CHACHKIN: All right. That's what the
12 requirement is. Now, whether he gets credit or not is not
13 an issue here. We're not talking about whether his license
14 for a particular frequency should be renewed because he
15 hasn't demonstrated that he had 60 or whatever the
16 requirement was units being used. The issue is whether he
17 willfully or repeatedly violated any of these rules. That's
18 the issue we have here.

19 MR. KNOWLES-KELLETT: And the rule we dealt with
20 yesterday, Your Honor, 93-13, the preliminary rule, --

21 MR. KELLER: Ninety-three what?

22 MR. KNOWLES-KELLETT: Three-thirteen.

23 JUDGE CHACHKIN: 94-313.

24 MR. KNOWLES-KELLETT: -- requires that when he
25 applies for a license -- I apologize, Your Honor. I'm

1 confusing the rules. 93-13 requires him to share
2 frequencies if he is not loaded to certain amounts. Okay?

3 JUDGE CHACHKIN: Right.

4 MR. KNOWLES-KELLETT: And that's what we're
5 supposed to determine whether he violated. Okay? That rule
6 has to be read in conjunction with several other rules.

7 Okay. 9127 requires a limitation --

8 JUDGE CHACHKIN: So you have to establish --

9 MR. KNOWLES-KELLETT: We have actually an
10 either/or version, Your Honor, and his is one of those
11 situations like in law school where we can't prove because
12 he didn't keep the records what happened, but there was foul
13 play somewhere.

14 MR. SHAINIS: I object to that characterization.

15 JUDGE CHACHKIN: You have to establish the foul
16 play.

17 MR. KNOWLES-KELLETT: Okay. This is what we have
18 to establish, but this is one of those situations where he
19 either, in violation of 91.7, failed to limit his
20 application to the number of mobiles they would have in
21 operation within eight months, either that would be
22 immediately in operation or purchase orders were in for, and
23 he mischaracterized the rule yesterday, Your Honor, I
24 believe. We haven't seen the transcript yet. He
25 characterized this rule as requiring certain documentation

1 with the application. That's not true.

2 What this rule says in "C" is "each application
3 shall limit his request to," and then describes how he is to
4 limit it. So this is part of that channel-sharing role.

5 JUDGE CHACHKIN: Well, I don't want to get into a
6 lengthy discussion. I assume you were right in finding the
7 conclusions.

8 MR. KNOWLES-KELLETT: Okay.

9 JUDGE CHACHKIN: The other party will have to
10 decide. What we're here for -- the purpose we're here for
11 is to gather the facts.

12 MR. KNOWLES-KELLETT: Correct.

13 JUDGE CHACHKIN: All right. Let's continue with
14 that process. Go ahead, Mr. Schauble.

15 MR. SCHAUBLE: Okay.

16 BY MR. SCHAUBLE:

17 Q Mr. Kay, if you're not there, please turn back to
18 pages 79 and 80 of Exhibit 19. Are you there, Mr. Kay?

19 A Yes.

20 Q Is it your testimony that all the customers on
21 page 79 of Exhibit 19 would have also been operating on
22 507.6625 Mhz from Sierra Peak?

23 A These customers all operated on 507.6625 Mhz.
24 They had capabilities of accessing our repeaters. We can
25 switch their configurations around any time we choose

1 remotely without touching these customers' radios, and these
2 customers did offer it in the area licensed under WIK 376 at
3 Sierra Peak. Their mobile units operated on that frequency
4 and drove within the service area of Sierra Peak. Depending
5 upon the configuration of their radios at any given time,
6 they either could or could readily use the Sierra Peak.

7 I can't tell you about each and every one of these
8 customers sitting here today. I don't have all the
9 information about those systems stored upstairs, my personal
10 knowledge. On these channels when we did loading, we
11 counted our customers that hard-paid us for them. We
12 counted where we can charge them. We counted hundreds and
13 hundreds of rental units which operate on across my UHF
14 frequencies, my Subpart L's, and operate on my 800's, which
15 you fellows saw when you visited my shop in Van Nuys. We
16 counted the use of our frequencies by other radio shops,
17 both for their internal usage, our own internal usage, their
18 rentals, their demos. Basically, if we had a radio, we
19 counted it, and varied the breakdown of this depending on
20 what frequency and what station.

21 Q Mr. Kay, do you see that Court Security Systems is
22 listed for one base and five mobiles on page 79?

23 A Yes.

24 Q And also turning to page 80, is it correct that
25 they would also be listed for one base? That listing is --

1 do you see the listing "one base and zero mobiles" on
2 507.6625?

3 A Correct.

4 Q Now, turn to Bates Stamp 3418 of Exhibit 347.
5 That would be the customer print screen for Court Security
6 Systems.

7 JUDGE CHACHKIN: What's that number again?

8 MR. SCHAUBLE: It's 3418. The records, Your
9 Honor, are in alphabetical order by customer name.

10 THE WITNESS: Yes, I have it.

11 BY MR. SCHAUBLE:

12 Q Is it correct, Mr. Kay, that for Court Security
13 Systems the monthly billing amount was -- do you see the
14 monthly billing amount listed as \$67.50?

15 MR. SHAINIS: Objection. Number one, what they
16 were billed is irrelevant.

17 JUDGE CHACHKIN: We'll find out. Overruled.
18 Go ahead. Proceed. Is that correct, \$67.50 was what the
19 monthly billing was?

20 THE WITNESS: I believe they were paying more than
21 that. It was \$135.

22 BY MR. SCHAUBLE:

23 Q Okay. Do you believe that Site Number 1, the Code
24 10-21, that would be a site at Mount Lukens. Correct?

25 A Yes.

1 Q Okay. Is it your belief that they were charged
2 \$67.50 a month for five mobiles at Lukens and also charged
3 separately \$67.50 a month for the use of mobiles at Oat
4 Mountain.

5 A That's correct. Their bill, however, would
6 reflect only \$135 a month. It was not broken out on their
7 invoices. We broke it up internally because Mount Lukens is
8 a forestry station, and Oat Mountain isn't, and this is the
9 only way we could accommodate bill splitting for what
10 dollars were credited to a forestry station and a non-USF
11 forestry station.

12 If you take a look at the right-hand side of the
13 bill there, you will see "10 Lukens," and it has an "F."
14 The "F" means it's a forestry site; therefore, we have to
15 account for the monies at a Forestry site. 11 Oat does not
16 have an "F"; it's not a forestry site.

17 The scheme of collecting fees at the Forestry
18 Service sites is relatively simple when you only have one
19 site, and it's a Forestry site that you're billing for. in
20 order to accommodate -- you're asking me why this is, I'm
21 sure. If you have a Forestry site and a non-Forestry site,
22 the dollars will split. When customers have multiple sites,
23 then you have to divide it up in some fashion, but we never
24 give the Forestry less than half the bill.

25 That's why you're seeing two sites on here where

1 we split the bill internally, is to accommodate creating a
2 money receipts register. I'm not sure, I can't tell you
3 internally how it's done in the computer; Graig Sobel set it
4 up -- so that we could generate a USF forest bill to collect
5 the dollars that were collected for the Forestry sites to be
6 able to pay those people.

7 Q Okay. So would it be correct that Court Security
8 Systems would be charged \$27 a mobile a month, or a total
9 monthly bill of \$135?

10 A They were paying \$135 a month for the radios they
11 had to use our system.

12 Q And is it correct from this record book that they
13 actually had five mobile units?

14 A Down below it says -- here it shows -- reflects
15 them as having six mobiles, six radios.

16 Q Okay. One control and five mobile.

17 A Correct.

18 Q Okay.

19 A If you take a look here, the start date was '87.
20 his was an old account --

21 Q Okay. And --

22 A -- which means this record was probably never
23 updated beyond their billing. I can't tell you for certain.
24 We only had a base and five. They may have had one or two
25 more mobiles than that, but their record was never changed

1 to reflect it, because they are being billed more than our
2 usual rate for that quantity of mobiles.

3 Q This would have been included in the data that was
4 audited before these records were produced in March of 19 --

5 A If we had doubts, we took a lower number. We
6 would rather underrepresent than tell you that they had more
7 than they exact had. We are always conservative.

8 Q Okay. So is it correct, Mr. Kay, that the billing
9 was set up in this way in order to distinguish between
10 billing between Forest Service sites and non-Forest Service
11 sites?

12 A That was a consideration on how we did a lot of
13 our billing because we had to somehow or other account for
14 the Forestry because the way it worked is we paid them five
15 percent of our gross receipts at the Forest Service sites as
16 an additional fee for being up there. It was \$100 a year
17 plus five percent of your gross fees received for that site.

18 Well, when customers had just one site, we charged
19 the customer \$100 a month for primary service on a Forest
20 Service site. That was fine. We gave them five percent.
21 If they had heavy usage on a non-Forestry site or had a
22 multitude of sites, it created an accounting and logistic
23 nightmare for us to be able to count it up, which is why
24 this system was, by and large, I would usually use the word
25 "tweaked," in order to accommodate making as best, fair and

1 honest reports to the Forestry to give those people the
2 money they were entitled to, and our billing system reflects
3 this tweaking to give the money to the Forestry. Now, the
4 billing system reflects this tweaking to give the money to
5 the Forestry.

6 Q Now, Sierra Peak is a Forest Service. Is that
7 correct?

8 A Yes, it is.

9 Q And it's correct that on this listing there is no
10 indication of operation from CRP. Correct?

11 A That's correct. We also, I believe, had 507.6225
12 over at an additional site that isn't reflected there
13 either. I believe we also had Castro Peak on there. If you
14 check your licenses, I think you'll find it. It's got a
15 report either. I'm going by memory here, but I think Castro
16 Peak is also on that license, and it's also a construction
17 station which your guys inspected in '97 besides inspecting
18 the repeater at Sierra Peak in '97.

19 That way, if a customer had access to four
20 repeaters on his frequency, we billed them for two, one USFS
21 site and one non-USFS site, so Forestry still got five
22 percent of half the fees. There was an even division
23 between repeaters to customer access. The Forestry was not
24 getting cheated. I never got audited by Forestry, but if I
25 did, I wanted to be able to show these people they were

1 getting their fair cut of the action, that they were being
2 properly paid.

3 Q Mr. Kay, just so the record is clear, would you
4 have any other sort of records which would indicate that
5 these customers operated from 507.6625 Mhz from Sierra?

6 A Sir, the only thing I can tell you is the customer
7 had the radios, had them in his cars, the company, I'm sure,
8 did operation in Orange County, which is in the 30-mile
9 radii of Sierra Peak, and beyond the 30-mile radii of Mount
10 Lukens or Oat Mountain or Castro Peak. If they weren't
11 operating under the call sign for Sierra Peak, then they
12 weren't operating licenses.

13 So I don't know what to tell you beyond that
14 because having these stations down there also allowed our
15 customers to have expanded operating range. If the customer
16 wasn't licensed on Sierra Peak and, hence, using that
17 license which authorized operation within a 30-mile radius
18 of Sierra Peak, then they were operating without a license,
19 and I certainly don't have my customers without a license,
20 sir.

21 Q My question, Mr. Kay, was, do you have any written
22 records indicating --

23 A I don't keep records of my customers' travels and
24 where they operate on individual stations. We can only make
25 the stations available to them. I've given you my written

1 records. I don't know what else is in what would be the
2 Court Security's file that I gave you. It was part of that
3 38,000 documents. That's why we copied all those files and
4 gave them to you. I don't know, sitting here, what's in
5 there. There may be additional information in there that
6 would be helpful to you, but I don't have it at my
7 fingertips to be able to give it to you.

8 Q Mr. Kay, please turn to WTB Exhibit Number 28.

9 MR. KNOWLES-KELLETT: I'm sorry, Counsel. What
10 number?

11 MR. SCHAUBLE: Twenty-eight.

12 MR. KNOWLES-KELLETT: Thank you.

13 THE WITNESS: This is WIL 235.

14 BY MR. SCHAUBLE:

15 Q Would it be correct that this authorization
16 authorizes operation on 507.7125 Mhz from Sierra?

17 A Yes, it does.

18 Q And is it correct that authorization for six more
19 rules under that authorization?

20 A Yes.

21 Q Okay. And is it correct that -- turn to pages 82
22 and 83 of the Exhibit 19. And my question, Mr. Kay, is it
23 correct that in responding to the answer to Interrogatory 4
24 you did not indicate any ruling for WIL 235?

25 A There is not a page here for it. That's correct.

1 Q Okay.

2 A We were not hard-filling the customer dollars with
3 that site.

4 Q Okay.

5 A As in the previous cases, these customers that
6 show on 507.7125 operate down there on their call sign in
7 that area. They operate on that frequency.

8 Q Do you see on page 82, Mr. Kay, there is a listing
9 for customers from Lukens, and on page 83 there is a
10 customer listing from Oat?

11 A Yes.

12 Q Okay. Would the customers who would be operating
13 from Sierra, would those be the Lukens customers, the Oak
14 customers, or both?

15 A All of these customers had the capability of
16 operating down off of Sierra Peak. The radios transmit and
17 receive on the 507, 510.7125 frequency pair. And if they
18 cannot manually access Sierra, we can readily give them
19 Sierra Peak, and their mobile units, I'm sure, in the course
20 of the travels of these customers, do go down and operate in
21 the area served by the Sierra Peak repeater.

22 Q So what I'm unclear is, these customers actually
23 have access to the Sierra repeater on that frequency.
24 Correct?

25 A If it is not in their radio as a regular call-up,

1 it is available to us to give it to them, and they would
2 automatically be operating on that license when they are in
3 that area.

4 Q Okay.

5 A A license, sir, -- I think you're splitting some
6 hairs here -- consists of multiple parts. A private-carrier
7 license consists not only of the repeater; it consists of
8 control points, temporary control points, temporary
9 repeaters, and also mobile units that are authorized both
10 use of 507.7125 and 510.7125. You're concentrating purely
11 on the repeater. It does not mean to units talking mobile
12 to mobile in Orange County, which is Sierra Peak's main
13 service area, are not utilizing that license when they do
14 that. They are because they are certainly not within the
15 service area of WIH 339. That would be on the northern side
16 of Los Angeles.

17 You all are well aware of the geography of Los
18 Angeles, that it's a gigantic, urban sprawl that is 70 to 80
19 miles north to south, and the sprawl is over 100 miles east
20 to west. One single service area doesn't cover it. That's
21 why multiple stations and multiple licenses are required to
22 cover it. You can operate on a frequency and literally
23 change call signs as you travel because you're traveling
24 into a different service area, much as with -- I'll give you
25 the Nextel system, where they switch from their cellular

1 site to cellular site. Each one has a separate call sign.
2 No change occurs in the radii there. As they switch from
3 site to site, they change from call sign to call sign, sir.

4 The same thing occurs here with our systems,
5 though not nearly as complex as Nextel. The call sign is
6 used, sir, with associated mobile units that may or may not
7 access the repeater on a regular basis.

8 Q And is it correct that you would not have any way
9 of knowing which of these customers was -- access to this
10 frequency in the Sierra area?

11 A Which is a 30-mile radius of Sierra Peak, and,
12 hence, a circle 60 miles in diameter. No, sir. I don't
13 have radio tracking on my customers, but the vast majority
14 of my customers operate on a wide area and can at any time
15 go anywhere in the Los Angeles area, and we certainly
16 service these customers' needs.

17 Q Would you have any way of determining which
18 customers' radios at that time actually had access to the
19 Sierra repeater as opposed to having the capability of
20 having access to the Sierra repeater?

21 A Whenever they transmitted and they were remotely
22 near the Sierra Peak area, their signals would have been
23 received by the Sierra Peak repeater. We have the
24 capability of both turning it on, and on some customers we
25 would switch on a service for a short time for them. If

1 there was a failure on, like, Mount Lukens, we would switch
2 on the Sierra Peak repeater for them as they needed it. If
3 their service area shifted for a short period of time, we
4 would switch one off and switch another one on.

5 We have the capability of doing that immediately
6 and by remote control from our offices to meet our
7 customers' needs. We also use the repeaters at Sierra Peak
8 for our rental units, demo units, and then to create a
9 regular record because switching customers on and off was as
10 simple as a few keystrokes to us or button pushes, depending
11 upon our system. It was that simple.

12 Q Okay. Now, Mr. Kay, is it correct that as of
13 November 9, 1995 you cannot state which of these customers
14 were actually accessing or operating from this frequency at
15 Sierra Peak?

16 A Sitting here today, I can't answer your question
17 because I don't know. You were given the hard customer
18 files for each of these customers. If you needed further
19 information, it was at your fingertips. That's why you were
20 given so many records, sir.

21 Q Mr. Kay, please direct your attention to WTB
22 Exhibit Number 29, Call Sign WIL 256.

23 A Yes.

24 Q Is it correct that this authorization authorizes
25 operation from 472.9375 Mhz in Sierra Peak?

1 A Yes, sir, it does.

2 Q Okay. And --

3 A It authorizes us to fix a base station there.

4 Q Yes.

5 A It also includes mobiles, temporary base stations,
6 temporary repeaters, and temporary control points.

7 Q Okay. And in this case the number of mobiles
8 authorized is 12.

9 A That's correct.

10 Q Okay. Now, directing your attention to pages 74
11 and 75 of Exhibit 19, is it correct that in responding to
12 the November 9, 1995 interrogatory that you did not list any
13 loading for WIL 256?

14 A That's correct.

15 Q Now, pages 74 and 75 list customers operating on
16 472.9375 Mhz from other sites. Correct?

17 A Yes.

18 Q Okay. Is it your testimony that those customers
19 also had access to or operated under WIL 256 at Sierra Peak?

20 A WIL 256 has authorized Sierra Peak as a fixed
21 repeater. It also authorizes other operations under that
22 call sign. These customers at any given time may have had
23 or not have had access to Sierra Peak. That information
24 would be contained in their hard records that were supplied
25 to you. These are the sites listed here that we were

1 billing them hard money for. Any time a mobile unit
2 associated with Mount Lukens when in Orange County it
3 exceeded the 30-mile radius authorized to WIF 759 and would,
4 of course, be operating on the Sierra Peak license when it
5 was within its 30-mile radii.

6 I think this is going to be the same on all of
7 these, that you're going to be asking, are the customers
8 that operated on frequency or in association with the
9 repeaters, according to the hard files that we gave you and
10 also as we temporarily set them up as needed and as they
11 operated their businesses.

12 Q Would it also be correct that the customer
13 printout screens of March 1995 would not reflect any
14 indication of operation from this frequency at Sierra Peak?

15 A That's entirely probably. Again, the billing
16 system was set up for when the hard billings were done they
17 were set up not only to bill the customer, but to allocate
18 funds, to Forestry sites and non-Forestry sites. My
19 customers had access to use of this frequency and the
20 licenses on the frequencies, much as a cellular customer can
21 go throughout his service area for a cellular carrier. They
22 may go there once a year; they may go there every day in
23 various areas. That's the way these systems work.

24 Q I think -- are you finished?

25 A We set up our billing to bill our customers and

1 not necessarily they are going to reflect everything the
2 system -- I think I've answered your question. I sure
3 tried.

4 JUDGE CHACHKIN: I think it might be appropriate
5 to take an hour lunch now until 1 o'clock. We didn't take a
6 break today because we started late.

7 MR. SCHAUBLE: All right.

8 JUDGE CHACHKIN: So we'll resume at 1 o'clock.

9 MR. SCHAUBLE: Thank you, Your Honor.

10 (Whereupon, at 12:00 p.m., a luncheon recess was
11 taken.)

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1 Q Do you see the grant date there of 11/18/93, Mr.
2 Kay, for that station?

3 A Yes.

4 Q And on page three do you see the site at Sierra
5 Peak?

6 A Yes.

7 Q And on the next page do you see, among other
8 things, the base station authorized on the frequency
9 472.9125 Mhz?

10 A Along with the other parts of the license, yes.

11 Q And the number of mobiles authorized under this
12 license is 77.

13 A Yes.

14 Q Now, is it correct that in response to the WTB
15 Exhibit 19 you did not provide any loading information
16 concerning WIL 342? And I would direct your attention to
17 page 73.

18 A Yes.

19 Q Okay. Is it correct that the only information you
20 provided concerning operation on 472.9125 was with regard to
21 Call Sign WIK 294 from Lukens?

22 A Yes.

23 Q And is it correct that on that frequency you
24 listed a total of 11 mobiles operating from Lukens?

25 A Those were our hard-cash-paying customers.

1 Q Okay. Are you aware of any other customers you
2 had that would operate from 472.9125 from any site?

3 A Not that I recall off the top of my head. I've
4 given you all my customer records.

5 Q Okay.

6 A We, of course, had, as I said before, the unbilled
7 services and rentals. Now, when we did rentals, we didn't
8 charge for the repair service; we charged for the rental of
9 radios. If we weren't giving away the rentals, we charged
10 for the radios, but not for the repeater service. I think I
11 explained that to you already.

12 And, also, what period of time were you wanting to
13 know this? I've already explained to you the customers that
14 were on before '93, September of '93, that canceled are not
15 in here.

16 Q What we're talking about is the time frame between
17 September '93 and November '95, which is the time period the
18 report in Exhibit 19 covers. Correct?

19 A Has a complete database on -- correct -- of hard-
20 paying customers --

21 Q Okay.

22 A -- unless they changed in between. If there was a
23 customer that was on 472.9125 in 1993 or in 1994 and changed
24 frequency to another channel prior to the printouts, that
25 previous usage would not be reflected here. In other words,

1 we could have Customer A that operated on Frequency A and
2 changed frequency to Frequency B prior to these printouts,
3 and the report will only show Frequency B. There was not a
4 history of prior usage of customers in here.

5 That was explained to you, too, where it says
6 their current configuration. Customers did change
7 frequencies and did change systems, and those changes, such
8 as we kept records, would be in the hard copies that we gave
9 you. They would not be reflected on the database because we
10 only kept the current customers' frequencies in the
11 database. Old usages were overwritten when the changes to
12 the account were made.

13 Q Okay.

14 A So I can't tell you that there were other people
15 here. I would have to literally try to go through every
16 individual customer file to determine whether there was one
17 previous one there.

18 Q Okay.

19 A By and large, we threw away old configuration
20 information because we didn't want to get any confused with
21 current.

22 Q Okay. Now, with respect to the database
23 information, it's correct that the database was in the form
24 of certain files on your computer.

25 A I never took apart the database, even to this day.

1 Even though I'm more literate on computers, I never took
2 apart how the billing system worked. I understand it used
3 something called "DBF files," but beyond seeing them on a
4 screen, I never worked with them.

5 Q Okay.

6 A I worked with various aspects of computers, but
7 that's one area where I don't have extensive knowledge
8 because I had a contractor take care of it.

9 Q Okay. But this data, asked more basically, this
10 data was on your computer. The current configuration was on
11 your computer. Correct?

12 A Yes. When we printed it out, we printed out the
13 entirety of what was there from these screens.

14 Q Now, is it correct that periodically you or one of
15 your employees would back up the data on the computer?

16 A Generally, that was I who did that. We did
17 backups with the ZENIX system, which did not work, was a
18 problem, and once it crashed, that's why we lost the data.
19 After it had been replaced in about April of '94, we began
20 doing backups of the DOS system. I found the earliest
21 backups of the DOS system were done starting somewhere in
22 July of '94 and then were done on every few days or a week
23 apart or whatever basis by overwriting the tape cartridges.
24 But I kept that by writing the dates on the cartridge of the
25 last backup. The earliest dates I found on any of the

1 cartridges were around July and August of 1994.

2 Q Okay. So it's correct that when you back up the
3 data, that that data would contain customer information as
4 of the date you took the backup. Correct?

5 A We backed up everything --

6 Q Among other things. I didn't mean to exclude
7 other information from that.

8 A Well, my understanding is that there was a program
9 wrote by Graig Sobel as an automatic backup. I go to a menu
10 on a DOS menu. I think it's Item Number S, for "system
11 backup." I press it, I press the space bar a couple of
12 times, and the tape starts whirring, and a whole bunch of
13 files go across the screen, and it's supposedly backing up.

14 Q Okay. So would it be correct that when you backed
15 up data, that would have the information in the computer as
16 of the time of the backup was made?

17 A Yes. It would take that information. From
18 watching the screen it gives some indication of what it
19 does. It erases the directory that's on the tape and then
20 proceeds to write a new directory and all the files onto the
21 same tape.

22 Q Okay. So you would have -- and would it then be
23 true that if there was damage or loss from the data, you
24 could then use the backup tape to restore --

25 A Correct.

1 Q -- that information onto the computer?

2 A Correct. I don't think we've ever -- I think one
3 time I had to pull some small information out of the tape,
4 and it worked.

5 Q Now, is it correct that as you did more current
6 backups you would overwrite the tape so that a prior backup
7 would be erased?

8 A We rotated, I think it was, two or three
9 cartridges.

10 Q Okay.

11 A A tape cartridge is about the size of an old
12 eight-track that you plug into the machine, and it would
13 write the data onto the cartridge, and it erased what was on
14 there first, and then rewrote the new information. So in
15 that fashion I guess you would say it was overwriting. It
16 actually erased and then rewrote as it did its backup to put
17 the new information on.

18 Q And you made no attempt to save or archive old
19 backup tapes. Correct?

20 A No. If we had two or three that we rotated
21 through, I grabbed the oldest one and it would run and then
22 I grabbed the next -- as I did week to week, just slipped
23 the oldest cartridge in.

24 Q Now, did you ever do backups on the old ZENIX
25 system?

1 A Yes, there were.

2 Q Okay. Do you remember, were those backups done on
3 a regular basis?

4 A Every couple of weeks, I think. When the ZENIX
5 system went out to lunch after the earthquake, apparently
6 when the backups were done, it destroyed the backups. I
7 don't know exactly what was going on with the ZENIX system,
8 something with a file-allocation table on the hard disk
9 corrupted, and when it did a backup, it was doing the same
10 overwriting, I understand. It overwrote bad information on
11 what was on the tapes. I think we only had one cartridge
12 for the ZENIX system, and it destroyed the backup, and,
13 hence, we were not able to recover very much data off of it,
14 which is why my gals had to end up having to punch
15 everything in again on the new system.

16 Q On the DOS system would it have been difficult for
17 you to keep an archive of prior --

18 MR. KELLER: Objection. Relevance.

19 JUDGE CHACHKIN: Sustained.

20 MR. SCHAUBLE: Your Honor, may I be heard on this?

21 JUDGE CHACHKIN: Sure.

22 MR. SCHAUBLE: The situation here where Mr. Kay
23 represented he does not keep historical loading information,
24 but there is backup tapes that have this information, and
25 even after the Commission's letter of inquiry he chose to

1 overwrite this data and not keep this data.

2 JUDGE CHACHKIN: It's his normal business practice
3 to overwrite it. I don't think he had to change his
4 business practices merely because the Commission would have
5 liked to have seen him do it, which happened after the fact
6 anyway.

7 MR. KNOWLES-KELLETT: The overwriting of the DOS
8 system happened after the 308(b) inquiry, so he was not
9 overwriting any information that existed prior to the
10 308(b) inquiry, and there is no FCC requirement that he keep
11 those records.

12 JUDGE CHACHKIN: Is that true, Mr. Schauble?

13 MR. SCHAUBLE: Well, --

14 JUDGE CHACHKIN: Did it happen after the 308(b)
15 inquiry?

16 MR. SCHAUBLE: During and after, Your Honor.

17 JUDGE CHACHKIN: What do you mean by "during"?

18 MR. SCHAUBLE: I mean that we had a continuing --
19 308(b) -- we had an unsatisfied 308(b) letter that was out
20 there for almost a year until the hearing designation order
21 was released in this case. During that entire time period
22 there were negotiations and attempts going back and trying
23 to obtain the information.

24 JUDGE CHACHKIN: You wanted information as of a
25 certain date in 1994, didn't you?

1 MR. SCHAUBLE: At one point -- in one of the later
2 letters we said any date after January 1, 1994 convenient to
3 Mr. Kay.

4 JUDGE CHACHKIN: And your question is what,
5 couldn't he have done what?

6 MR. SCHAUBLE: Saved the library backup tapes.

7 JUDGE CHACHKIN: I'll let him answer the question.

8 THE WITNESS: The last ZENIX-style backups would
9 have been done in, like, January of 1994. My computer was
10 badly damaged in the earthquake, which was January 17th,
11 between two and three weeks before the 308(b) letter,
12 actually two weeks exactly before the date on the 308(b)
13 letter, so it would be, like, two and a half weeks later
14 before I received it. That's when the damage occurred to
15 that system that was a total failure. There are not any
16 ZENIX tapes that are not completely corrupted and were
17 corrupted before we ever got around to the 308(b), looking
18 at answering it or doing anything with it. I don't have
19 anything prior.

20 The first new backup tapes that occurred off the
21 DOS system after we rebuilt the computer, I just testified a
22 minute ago, were, like, July of 1994. I looked, and, very
23 frankly, I didn't think of keeping a backup tape because we
24 just didn't do any further deletions. Once we got the
25 system on the new DOS system, we did not do any purchase. I

1 didn't throw away any data. To this date we haven't thrown
2 any away which overwrote the normal course of business.

3 I didn't think of keeping an old, archived tape as
4 a backup. I had never given magnetic media to the
5 Government, let alone a backup tape drive, which would -- I
6 don't know if you could legally get the entire tape drive
7 because it contains correspondence, including stuff between
8 myself and my attorneys. It's got all types of private
9 material on it as well. This has backed up everything.
10 It's far more than just that on it, and the earliest one on
11 the DOS system was July of '94, after we had already had an
12 extensive exchange.

13 If you're thinking there was some type of a
14 backup-tape cartridge that was even created after your
15 308(b), it doesn't exist. There aren't -- anything in
16 there. We redid the entire system during that period due to
17 the destruction of that system, the earlier ZENIX system.
18 We had to rebuild it on a DOS format.

19 I don't have what you're looking for there, guys;
20 and even if I did, as I testified earlier when you asked
21 about my giving files from the computer to you, it wouldn't
22 have answered your 308(b) letter. It does not contain the
23 information the way you asked for it. It would not have
24 complied, even if I had thought of it.

25 JUDGE CHACHKIN: Go ahead, Mr. Schauble.

1 BY MR. SCHAUBLE:

2 Q Please turn to WTB Exhibit 33, Call Sign WIL 350.

3 Mr. Kay, turning to the fourth page, do you see that the
4 base frequency there is 471.9375 Mhz?

5 A Yes, it is.

6 Q And the number of mobiles authorized is 27.

7 A Yes, it is.

8 Q And turning to the third page, there the base
9 location is Sierra Peak.

10 A Yes. That's correct.

11 Q And is it correct that you did not provide any
12 loading, in response to WTB Exhibit Number 19, that you did
13 not provide any loading information with respect to WIL 350?

14 JUDGE CHACHKIN: What page is that?

15 MR. SCHAUBLE: 1551, Your Honor.

16 THE WITNESS: I believe that would be correct.

17 BY MR. SCHAUBLE:

18 Q Okay. Is it your testimony that the customers
19 listed on page 50 and 51, that the customers listed as
20 operating on 417.9375 from other sites would have also
21 operated under the authorization WIL 350?

22 A Yes, they would have. Some may have used the
23 repeaters, some may not have, and they may have done it at
24 varying times, but they would have operated underneath that
25 authorization, yes.

1 Q They would have operated under that authorization
2 if their mobiles were within a certain radius of Sierra
3 Peak.

4 A Correct. Or within a radius of a temporary
5 station. We have had occasions where we have temporary
6 stations. The FB 16, which basically authorizes to place a
7 repeater anywhere within a 30-mile radius of the fixed
8 repeater, it would have mobiles operate within a 30-mile
9 radius of the location of that temporary repeater. Not
10 necessarily this frequency, but we've had cases of that,
11 where we've used temporary repeaters off of these stations.
12 It gave us a great deal of flexibility with these licenses
13 to meet our customers' needs, and we utilized that
14 flexibility.

15 Q Mr. Kay, please turn to WTB Exhibit 34. The
16 authorization for WIL 372; do you see that?

17 A Yes.

18 Q And reviewing pages three and four, would you
19 agree that the base frequency is 507.7375 Mhz?

20 A Yes, it is.

21 Q And the number of mobiles authorized is 21.

22 A Yes.

23 Q And turning to page three, the sites are -- base
24 sites are Mount Lukens, Oat Mountain, and Sierra Peak.

25 A That's correct.

1 Q And is it correct that in response to WTB Exhibit
2 Number 19 you did not provide any information concerning --
3 actually, take that back. Turn to page 88 of Exhibit 19.

4 A Okay.

5 Q And this is a loading report for 507.7375 at
6 Sierra.

7 A Yes.

8 Q And there is a listing for Wyenn & Associates.

9 A Yes.

10 Q And this is listed under another call sign --
11 correct? -- WIH 872?

12 A Yes. That would also have been the one you were
13 just questioning me about. That same physical piece of
14 hardware would have worn both call signs.

15 Q Okay.

16 A WIL 372 would also be the same physical piece of
17 hardware as WIH 872.

18 Q Okay.

19 A You're correct.

20 Q So would it be more accurate to list it as WIH 872
21 and WIL 372?

22 A Correct. I think you found one oversight
23 yesterday somewhere.

24 Q Mr. Kay, turn to WTB Exhibit 35.

25 A Okay.

1 Q And do you see -- would it be correct that this
2 authorization had a base frequency of 471.1875 Mhz?

3 A Yes, it does.

4 Q Okay. And the number of mobiles authorized under
5 this authorization is 18.

6 A Correct.

7 Q And the base transmitter locations are Oat
8 Mountain and Palos Verdes Peninsula.

9 A I'm taking your word because these are your
10 printouts here. I have no knowledge of these documents
11 myself. If these documents are wrong, I wouldn't know it
12 sitting here, so I'm taking your word on these documents
13 that that's what these documents say.

14 Q Okay. Turning to page 22 of Exhibit 19, do you
15 see there is a loading report for 471.1875 Mhz at Oat?

16 A You've done your job well, yes. That call sign
17 that we just looked at should have also been reflected
18 there. It has the same piece of physical hardware, WIJ 712.
19 It would have been WIL 392. As a matter of fact, I believe
20 that Paul Oei, when he did his report in '97, noted that a
21 number of pieces of physical hardware were wearing two call
22 signs.

23 Q Let the record reflect that the discussion of
24 Paul, I think we all agree, is Paul Oei, the CIB engineer
25 who inspected Mr. Kay's stations and will be testifying in

1 this proceeding.

2 A Yes. That's O-E-I.

3 Q Mr. Kay, turn to WTB Exhibit 38, WIL 441.

4 A Okay.

5 Q Turning to page four, would you agree that the
6 base frequency for this authorization is 472.4125 Mhz?

7 A That's what the document shows, sir.

8 Q And this document shows that the number of mobiles
9 authorized is 10.

10 A Correct.

11 Q And on page three it shows the base location as
12 Sierra Peak.

13 A Yes, it does.

14 Q And turning to page 66 -- page 67?

15 A Uh-huh.

16 Q -- Mr. Kay, is it correct that in the response to
17 Exhibit 19 you did not provide any information concerning
18 loading on 472.4125 at Sierra?

19 A Correct.

20 Q Okay. On page 67 do you see a listing for two
21 customers at Lukens?

22 A Yes. Those are our hard-paying customers that are
23 being charged for Mount Lukens and operated on the same
24 frequency that both of those licenses are on.

25 Q Okay.

1 A That's right.

2 Q Mr. Kay, please turn to WTB Exhibit Number 41.

3 There is a listing here for WIL 625.

4 A Yes.

5 Q And do you see the base frequency is 472.3625 Mhz?

6 A Yes.

7 Q And the number of mobiles authorized is three.

8 A That's correct.

9 Q And on the previous page the base transmitter
10 sites are Mount Lukens and Sierra Peak.

11 A Yes.

12 Q Now, turn to pages 66 and 67. Is it correct that
13 in response to WTB Exhibit Number 19 you did not provide any
14 information concerning any operation on 472.3625 Mhz?

15 A You're absolutely correct.

16 Q Okay.

17 A I can tell you this channel was used with only
18 three mobile units authorized for our rentals and demos-type
19 purposes. We didn't have enough loading count on there to
20 put big customers on. Three mobile units won't even take
21 your average-sized business customer, so we used it purely
22 as a rental/demo channel.

23 Q Mr. Kay, please turn to WTB Exhibit 42, WIL 653,
24 and on page four do you see the frequency 472.2625? The
25 number of mobiles authorized is 19.

1 A Correct.

2 Q And let me ask you this question. You see the
3 transmitter site at San Pedro Hill.

4 A Correct.

5 Q Was this facility ever constructed?

6 A The repeater was not. We told you that.

7 Q So we can stipulate to this cancellation of this
8 license.

9 A No. This says we didn't run mobiles. The station
10 authorizes mobile operation of 472.2625, talk-around car
11 unit to unit, from car units to portables, from portables to
12 car unit, from car unit to car unit, and also the use of the
13 FB-6T temporary base stations, which we certainly have
14 enough of those in my shop, which you have seen. You could
15 delete the FB-6 fixed station, though my attorneys have to
16 do the stipulation. That part of the license was not
17 constructed. We told you it wasn't constructed, but as far
18 as the rest of the license, that's an entirely different
19 story, sir.

20 Q Mr. Kay, please turn to WTB Exhibit 47, and
21 turning to the fourth page you see a base frequency of
22 471.9125. On the third page, the base location is South
23 Mountain. Do you see that, Mr. Kay?

24 A Yes.

25 Q Okay. Now, is it correct that the base station

1 authorized by this call sign was never constructed?

2 A That's correct. We told you that a long time ago.

3 Q And have you provided us with any documentation
4 demonstrating that mobiles never operated on 474.912 that
5 were operated under this authorization?

6 A I did not provide you a loading report sheet for
7 that. You do have, or I believe have, one for 471.9125
8 frequency in your exhibit. Yes, you do. It's page 46.

9 JUDGE CHACHKIN: Page 46 of what?

10 THE WITNESS: Of Exhibit Number 19, and 47 and 48
11 and 49 represent use of Frequency 471.9125.

12 BY MR. SCHAUBLE:

13 Q And is it your testimony that the stations listed
14 on this report as operating on this frequency, in fact,
15 operated under the authorization of WIL 659?

16 A They could easily have. If my customers went out
17 there into its 30-mile service zone, they would have
18 operated under that call sign. Can I tell you which
19 customers went out there and when? The answer is no, but I
20 can tell you customers did have that frequency, did use it
21 very probably out in that area. I'd have to call them and
22 ask them how many times they went out in that area, what
23 their businesses did involve. You've got, like, Dial
24 Courier on here, a shopping-cart service, a tavern service.

25 I would almost assure you that customers went out

1 beyond the 30-mile radius of Mount Lukens into the area that
2 would have needed authorization for them to operate their
3 radios near South Mountain, which is more than 40 miles from
4 Mount Lukens.

5 Q Okay. It would be correct that they would never
6 use the repeater authorized under this last --

7 A They couldn't have if it wasn't constructed, sir.
8 But the failure or nonconstruction of one part of a license
9 when other parts of the license can't be fully operational
10 does not result in the cancellation of the station
11 authorization.

12 Q Mr. Kay, please direct your attention to WTB
13 Exhibit 50, WIL 665.

14 A Yes.

15 Q And is it correct that the base frequency for this
16 authorization was 507.8375 Mhz, the number of mobiles
17 authorized was seven, and the base locations were Mount
18 Lukens, Hollywood Hills, and Oat Mountain?

19 A Yes.

20 Q And turning to pages 90 and 91 of Exhibit 19, is
21 it correct that you did not provide any loading information
22 in response to WTB Exhibit 19?

23 A That's correct.

24 Q And, as a matter of fact, you did not provide any
25 information concerning any operation on 507.8375 Mhz.

1 A Again, it's because we didn't hard-bill for them.
2 That's correct.

3 Q Okay. Did you have any, to your knowledge, do you
4 have any customers who ever operated on 507.8375?

5 A I absolutely believe so. I believe we have some
6 today.

7 Q Again, so I'm clear, my time frame is between --
8 let me ask it this way. In September of '93 and November of
9 '95 did you have any customers operating?

10 A I would believe so. Their repeater stations were
11 constructed. I believe they may have missed one of them on
12 their inspection or it was down for service. I'd have to
13 check. There was one or two they found that was down for
14 service during the inspection of the three to 400 repeaters
15 that I have. This may have been one of them, though I'm not
16 certain of that.

17 Q Okay.

18 A But we have radio units that operate on that
19 frequency. I believe we may have a hard-paying customer on
20 that channel today. It's only got a small number of mobile
21 units. It was also sometimes our practice, customers would
22 want to have what they call a "talk-around channel"
23 different from their home repeater channel or to have an
24 additional talk-around other than a primary repeater
25 channel, and we would give them those channels at no charge.

1 Hence, you could have a customer operating on, for example,
2 507.7125, and also have a talk-around unit to unit on
3 507.8375. Well, we charge them hard billing on the 507.7125
4 for the repeaters and allow the customer to operate free
5 unit to unit on the 507.8375 where we also have our repeater
6 installed and would use for rentals and demos. We
7 configured these systems as our customers needed them and as
8 we needed them.

9 So your lack of hard billing on a particular
10 frequency is not indicative that we did not construct or did
11 not use these frequencies. And records where we put in
12 these free talk-arounds are, by and large, contained in the
13 hard copy of the paper that we gave you. That's why we gave
14 you all those documents, because those are contained in
15 there. And I know for a fact that a lot of the free talk-
16 arounds that we gave customers never made it on our billing
17 system.

18 For one reason, we didn't have nearly as many
19 items, the one through 10, that we could put in the billing
20 system until a few short years ago when we rebuilt it on the
21 DOS system. Before, I believe we were limited to, like,
22 four lines. There might have been five. I'd have to ask
23 Graig Sobel to tell you. But if they went past that, there
24 was no way of entering in into the billings because not only
25 could we not bill it; it couldn't even be entered. There

1 wasn't a physical place to put it. We modified the system
2 as we went and as we needed it to try to get more and more
3 detailed information onto the computer.

4 Does this help you?

5 Q Question: Did you ever put information concerning
6 talk-around frequencies for customers on the billing system?

7 A Some, yes, and far more recently, if there was
8 room for it and it was different from their primary channel,
9 yes. We program talk-arounds into almost all of our
10 customers' radios, and a lot of the 800 customers that have
11 programmable radios also have talk-arounds. And if they are
12 on our trunk system, we wouldn't give them a talk-around on
13 the output of our trunk system, (a), because we are not
14 authorized for it; and, (b), it would cause interference to
15 local receivers on the trunk system.

16 We would give separate talk-arounds on
17 conventional channels so it would not create interference to
18 the trunk, and also we were authorized to provide talk-
19 around operation on our 800 conventional stations. So the
20 answer is, yes, we certainly did, and an awful a lot of
21 times it was not recorded on the billing system, and it
22 would all be appearing, again, on hard copy or in the
23 computer files that would have the actual individual
24 customers' programmings.

25 Unfortunately, our record-keeping is not as good

1 as it could be, and it created a nuisance for us. Sometimes
2 we actually had to take a customer's existing radio and --
3 the technician term is "suck its brains" -- with the
4 computer, download the information out of the customer's
5 radio, and then turn around and program that information in
6 a new radio the customer was buying.

7 Q Mr. Kay, please direct your attention to WTB
8 Exhibit 53.

9 A Yes, sir.

10 Q Okay. Now, do you see on the first page that the
11 service of this is GX. Is that correct?

12 A That's correct. It's conventional SMR.

13 Q Conventional 800 Mhz SMR.

14 A That's correct. I don't have SMRs on UHF. We
15 have private carriers on UHF, so when we say SMR, it's
16 automatically an 800- or 900-Mhz service.

17 Q And turn to the fourth page of the exhibit, Mr.
18 Kay.

19 A Which exhibit? Oh, here? Okay.

20 Q Can you tell me what the base frequency is for
21 this authorization?

22 A It's 851.9125 Mhz.

23 Q And the number of mobiles authorized under this
24 authorization?

25 A Authorized 72 mobiles.

1 Q Okay. And in your response to WTB Exhibit 19 did
2 you provide any information concerning loading for this?

3 A No, we didn't.

4 Q Did you ever have mobiles prior to -- between the
5 time this authorization was granted in November 1995 did you
6 ever have mobiles under this authorization?

7 A Okay. Thanks for asking. 851.9125 Mhz has been
8 continuously constructed up at a site called Palvika Peak,
9 which is up above San Bernardino. This frequency is shared,
10 and was then, with two additional stations, one located at
11 Mount Lukens, which was incorporated into a trunk system and
12 used a tremendous amount of air time. It also shared with a
13 station at Heaps Peak about 10 miles away, ostensibly
14 licensed as a conventional system but, in fact, operated as
15 a de facto trunk, which also used a tremendous amount of air
16 time.

17 Yes, we had the repeater there. We used it purely
18 for demos and the shop usage of my buddy, Don. The repeater
19 is up at Don's house at Palvika Peak. We can't use it
20 effectively for customers because the frequency is
21 absolutely destroyed and overloaded by two co-channel
22 stations, one of them the operation of which is
23 questionable, but that's the way it is.

24 So we keep the station. It's used intermittently
25 as I want to use it, as Don wants to use it. We have radios

1 for it, but we can't sell the service to customers because
2 the channel as it stands, and has been for the last several
3 years, is one step above completely unusable. We could
4 never sell commercial service on it; the customers would
5 throw the radios back at us.

6 Well, we make what use of it as we can because the
7 channel is fully loaded by both co-channel stations, which
8 completely overlap -- to keep the station operational,
9 license-wise, requires no more than two mobiles or one
10 mobile and one control station, and I assure you we have
11 that. The loading count on here of 72 mobiles is
12 irrelevant. The channel is completely overloaded by two
13 other stations, and you'll find that's a common case on 800
14 Mhz. But do we have our hardware in place? Do we use it
15 every now and then as needed? Yes, we did.

16 Q Okay. Just for the record, Mr. Kay, "Don" is --

17 A -- Donald L. Petron, DBA, Communications
18 Techniques, who lives in Riverside and owns a home at
19 Palvika Peak, who is a radio man and operates radio
20 equipment as his own company.

21 Q Thank you. Okay. Mr. Kay, please turn to WTB
22 Exhibit 54. Please turn to Exhibit 55.

23 A Okay.

24 Q WNYQ 437.

25 A Yes.

1 Q Okay. Is it correct that the base frequency for
2 this authorization is 852.9625?

3 A That's correct.

4 Q And the number of mobiles authorized is 72?

5 A That's correct.

6 Q And base location is Santiago Peak?

7 A That's correct.

8 Q And is it correct that in your response to WTB
9 Exhibit 19 you did not provide any loading information for
10 this call sign?

11 A You're perfectly correct. I didn't.

12 Q Between the time this authorization was granted
13 and November 1995 have you had any mobiles operating under
14 this?

15 A Yes.

16 Q Okay.

17 A It was constructed timely, and this had mobiles in
18 operation. Similar to the situation with the one you just
19 asked about, this particular station is co-channelled to two
20 stations. One of them happens to be mine at Snow Peak
21 licensed under a trunk system of WIK 762, which incorporates
22 this same frequency. Also, this frequency is licensed to --
23 I'm not sure of the name, but it's basically the Getty
24 Museum located near Pacific Palisades. They also use this
25 frequency.

1 The usage on this particular station, on the
2 frequency in question the station is on is heavily loaded,
3 both by my trunk system and the operation of the Getty
4 Museum. Hence, the usage we can make of this station is
5 very minimal. We use it infrequently for testing, for
6 demos. Basically, we don't use it much. We don't need to.
7 We only need to keep a base and a mobile or two mobiles in
8 service to maintain a license, which we have chosen to do.
9 We choose not to use the frequency heavily because of the
10 same frequency traffic that is on the channel.

11 Q Mr. Kay, please turn to WTB Exhibit 56, WPBW 517.

12 A Yes.

13 Q And base frequency, 854.6375 Mhz.

14 A Yes.

15 Q Number of mobiles authorized, 72.

16 A Yes.

17 Q And base location, Oat Mountain.

18 A Yes.

19 Q Is it correct that in response to WTB Exhibit 19
20 you did not provide loading information for this call sign?

21 A That's correct.

22 Q Okay.

23 A -- that one, too?

24 Q Mr. Kay, do you want to go ahead and explain?

25 A The base stations was installed timely at Oat

1 Mountain. There is a secondary station we have on that
2 channel, on our FB-2T, or actually FB-2J, to be precise,
3 because it has interconnect capability. That FB-2T is
4 located in Hollywood Hills. It's very heavily in operation
5 over there. I carry a tremendous number of mobiles as a
6 Spillman-style trunk system, or should I say, conventional,
7 quasi-trunk operation, at the Hollywood Hills.

8 So do we have this base station up? You betcha'.
9 Do we have mobiles that can and do operate on it to keep
10 construction for that base station? Yes, we absolutely do,
11 and we have a repeater station over in Hollywood Hills
12 that's carrying all the traffic on this frequency and is
13 literally beat to death all day long by customers talking on
14 it. Are we using it? You betcha' we're using it and
15 heavily so, but we're not billing specifically for this.

16 I think if you look in the book here, you will
17 find -- you may not find it in here because the primary
18 loading on the Hollywood Hills system is on managed stations
19 and not mine, hence, would not have a report, but is
20 operating in association with managed stations.

21 Q Would it be operating in connection with managed
22 stations licensed to Marc Sobel?

23 A Yes. For Spillman multiple-base station, quasi-
24 trunk operation.

25 Q Okay. We're now going into discussing a series of

1 call signs for which you did provide loading reports.
2 Please turn to WTB Exhibit Number 57, Call Sign
3 KJV 843. Do you see that?
4 A Yes, I do.
5 Q And turn to the fourth page of the exhibit.
6 A Yes.
7 Q Do you see the number of mobiles authorized under
8 this authorization is 180?
9 A Yes.
10 Q And now turn to WTB Exhibit 58.
11 A Okay.
12 Q And is this your loading report for the Call Sign
13 KJV 843?
14 A That's correct.
15 Q Okay.
16 A Those are the hard-billed customers on there.
17 Q Okay. And would it be correct that on page one
18 under "Lukens" --
19 A Yes.
20 Q -- is it correct that on that page the total of 59
21 mobiles?
22 A I haven't added it up. If you used your
23 calculator, I will assume you're correct.
24 Q Okay. I will represent to you, I've added it up
25 and --

1 JUDGE CHACHKIN: subject to check by the other
2 party.

3 BY MR. SCHAUBLE:

4 Q -- check and correction by you or your counsel, on
5 page two would it be correct that Aqua Concepts and Alan
6 Simmons are also listed under this call sign under Lukens?

7 A Yes.

8 Q Okay. Page three, under "Castro," again, Aqua
9 Concepts and Alan Simmons are listed under Lukens.

10 A Yes.

11 Q And on page four, Basura's Towing, seven mobiles,
12 is not listed previously. Is it correct that M.F. Davalos
13 Trucking is listed on page one under Lukens. Correct?

14 A Yes.

15 Q Okay. And McGee & Sons Vending is listed as
16 having five mobiles. Correct?

17 A Yes.

18 Q Okay. So subject to check, would it be correct
19 that you reported a total of 71 mobiles operating under this
20 call sign?

21 A Four customers that we're hard billing for.
22 That's correct.

23 Q Okay. To your knowledge, were there other
24 customers who have been operating under this call sign that
25 were not reflected in this report?